

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 6, 2001 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mary Torrence, Revisor of Statute's Office
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Senator Tim Huelskamp
Mike Beam, Kansas Livestock Association, 6031 SW 37th,
Topeka, KS 66614-5129
Jamie Clover Adams, Secretary, Kansas Department of
Agriculture, 109 SW 9th Street, Topeka, KS 66612-1280
David L. Pope, Chief Engineer, Division of Water
Resources, Kansas Department of Agriculture, 109 SW 9th
Street, Topeka, KS 66612-1280
Leslie J. Kaufman, Division, KS Farm Bureau, 2627 KFB
Plaza, Manhattan, KS 66505-8508
Chris Wilson, SW Kansas Groundwater Management
District #3, 409 Campus Dr. Ste 106, Garden City, KS 67846
Steve Williams, Secretary, KS Department of Wildlife and
Parks, 900 SW Jackson, Ste 502, Topeka, KS 66612-1220
Ron Klataske, Executive Director, Audubon of Kansas, PO
Box 156, Manhattan, KS 66505
Art Brown, Mid America Lumbermen, 638 W. 39th Street,
PO Box 419264, Kansas City, MO 64141-6264
Mary Jane Stattelmann, Administrator, KS Agricultural
Remediation Board, 816 SW Tyler, Topeka, KS 66612
Doug Wareham, KS Fertilizer & Chemical Association, 816
SW Tyler, Topeka, KS 66612
Clint Riley, Dept. Attorney, KS Department of Wildlife and
Parks, 900 SW Jackson, Ste 502, Topeka, KS 66612-1220
Bill Gill, KS Director, US Fish and Wildlife Service, 315
Houston Street, Ste E, Manhattan, KS 66502
Alan J. Pollom, Director, The Nature Conservancy, 700 SW
Jackson, Ste 804, Topeka, KS 66603-3758
Charles D. Lee, Extension Specialist, Wildlife K-State
Research and Extension, K-State University, Manhattan, KS
66506

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She assigned a sub-committee to study **HB2373** and **Substitute for SB204**; Rep. Joann Freeborn, Chair; Rep. Jeff Peterson; Rep. Bill Light; Rep. Vaughn Flora; and Rep. Laura McClure.

The Chairperson Recognized Rep. Don Myers. He submitted copies of the Sub-Committee report on **SB37 - An act prohibiting sales of certain motor-vehicle fuel and providing penalties for violations.** He reviewed the changes that had been made. Two amendments had been made to the bill, (1) On page one, section one, (c), line 23, "motor vehicle fuel retailer" had been changed to "distributor". (2) On page 2, lines 15 through 18, (h), had been stricken. (See attachment 1) Questions and discussion followed.

Rep. Sharon Schwartz made a motion the sub-committee report be adopted. Rep. Becky Hutchins seconded the motion. Motion carried.

Rep. Vaughn Flora made a motion the bill be passed favorably as amended. Rep. Don Myers seconded the motion. Motion carried. Rep. Don Myers will carry the bill on the House Floor.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 6, 2001.

The Chairperson opened public hearing on SB237.

SB237: An act supplementing the Kansas water appropriation act; providing for certain accounts for deposit of certain water under a water right; providing for term permits for use of such water, less a conservation element.

Chairperson Freeborn welcomed Senator Tim Huelskamp to the committee. Senator Huelskamp addressed the committee in support of the bill, which he introduced and believes is different from some of the ideas that have been floated to address concerns about the declining groundwater aquifers. It provides a clear policy direction, elimination of the state's "use it or lose it" policy. Currently policy dictates that, at the end of each year, any water not used by a water-right holder is forever lost to that user. Thus, an individual water right holder has little or no direct incentive to conserve water, there is no possibility to save that water for later use. No direct incentive to conserve water, no flexibility year to year. This bill, if implemented, will change this by allowing multi-year water appropriations to provide a direct incentive to conserve water in anticipation of future needs. (1) This bill would allow water right holders, at their option only, to deposit their water right in a multi-year flex account. (2) The water user would then be issued a term permit that would allow maximum time flexibility in water usage over the next five years and, (3) In exchange, the user is permitted to use only 90% of his historical water usage during that time period, thus guaranteeing a 10% conservation element. (See attachment 2)

Mike Beam, Kansas Livestock Association, was welcomed to the committee. He testified in support of the bill. KLA believes this bill would allow any groundwater right holder to establish a "flex account" and deposit, in advance, water from a water right for any five consecutive calendar years. The amount of water that shall be deposited in the account shall be 90% of the amount of the holder's "base average usage", times five. Base average usage means the average amount of water actually used during calendar years 1998, 1999, and 2000. Division of Water Resources would provide term permits to groundwater right holders who have established flex accounts. The permits would authorize the use of water in a flex account at any time during the five consecutive calendar years without annual limits on usage. (See attachment 3)

Jamie Clover Adams, Secretary of the Department of Agriculture, was welcomed to the committee. The Secretary made comments in support of the bill and supported the testimony of David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture. She believes the Kansas water resource is a mature resource and as such, requires a different set of regulatory tools than were necessary fifty years ago. We need to look for new and innovative ways to give flexibility to individual water right holders while still providing adequate administrative control over the appropriation of water to prevent injury to established uses and the underlying source of water supply. She believes this bill, with the modifications outlined in David Pope's testimony meets this criteria and deserves the committee's careful consideration. (See attachment 4)

David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture, was welcomed to the committee. Mr. Pope testified in support of the bill and believes implementing this bill will affect the division of water resources and its duties relating to the administration of the Kansas Water Appropriation Act. This bill would allow a groundwater water right holder to establish a five year flex account subject to certain conditions. The amount of water that may be deposited into an account would be equal to 90% of five times the average annual amount of water used between 1998 through 2000. The 10% reduction in the amount of groundwater used is based on historical data and it is requested in exchange for the flexibility that allows an annual diversion amount to exceed what is currently authorized. The bill requires the chief engineer to issue term permits to authorize diversion of the water any time during the five year term of the permit. One positive aspect of the bill is the 10% reduction in water use it requires. He believes, however, that the three year base average usage calculated using data from 1998, 1999, and 2000 would not adequately characterize water use. He suggests using a 5 year average to calculate the base average usage and more accurately characterize water use. (See attachment 5, an amendment to the bill is attached.)

Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau, was welcomed to the committee. She addressed the committee in support of the bill. KFB believes this authorizes any holder of a groundwater water right the opportunity to establish a flex account where the holder may deposit, in advance, water from such water right for any five consecutive calendar years. The Chief Engineer of the

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 6, 2001.

Division of Water Resources at the Kansas Department of Agriculture shall provide for the issuance of term permits to holders of groundwater water rights who have established flex accounts and authorize the use of water in a flex account at any time during the five consecutive calendar years without annual limits on such use. This bill is designed to conserve water while allowing irrigators more flexibility in managing their water right. Kansas Farm Bureau respectfully encourages the committee to recommend the bill favorable for passage and advance the measure to the full Senate. (See attachment 6)

Chris Wilson, Legislative Liaison for Groundwater Management District #3, was welcomed to the committee. She testified in support of the bill and supports the effort to bring additional flexibility to water right holders and encourage water conservation. This bill would allow water users to hold water appropriations in reserve for greatest times of need, and not feel they have to "use it or lose it". Potential benefits of this approach would include: (1) Conservation benefits would apply not just to irrigation. (2) Would allow for more efficient use of water in times of greater demand. (3) Allows for drought preparedness. (4) Creates the opportunity to provide amnesty for illegal over pumping that may have caused people to become victims of circumstance. (5) Allows senior water right holders to compensate for problems that may have resulted from impairment by junior rights. (6) May help buy time while addressing "zero depletion." (See attachment 7) Questions and discussion followed.

There were no opponents to the bill. The Chairperson closed the hearing on **SB237**. She opened the hearing on **SB147**.

SB147: An act concerning wildlife and parks; relating to certain fees.

Chairperson Freeborn welcomed Steve Williams, Secretary of the Kansas Department of Wildlife and Parks, to the committee. Secretary Williams testified in support of the bill and asked for consideration to redefine selected fee ranges. Since 1996, the department has provided the public with numerous innovative programs and services, which include: Walk-in Hunting Areas program; Fish Impoundment and Stream Habitat program; Shooting range development grants to communities; Community lake assistance grants to communities; State fishing lake dam repairs; Incentive-based upland bird habitat enhancement projects on private land; ADA renovation work at state fishing lakes and wildlife areas; and Motor boat access facilities. In addition to these new programs, the department has experienced increased salaries, wages, benefits, operations, maintenance, and capital outlay expenses. The Wildlife and Parks Commission and department ask for the committee's help in addressing this financial concern. (See attachment 8)

Ron Klataske, Audubon of Kansas was welcomed to the committee. He testified in support of the bill. He believes the economies of communities throughout the state benefit from the recreation associated with hunting, fishing, boating, wildlife watching and other activities. Wildlife and other natural resources, and the uses of these resources, require professional personnel and management at the state level. In order to keep pace with the challenges of changing circumstances and to keep financial resources within the framework of inflationary factors, the Kansas Department of Wildlife and Parks, under the guidance of the Commission, need to have the ability to modestly adjust the fee structure as outlined in this bill. (See attachment 9) Questions and discussion followed.

There were no opponents to the bill. The Chairperson closed the hearing on **SB147** and asked if the committee wished to take action.

Rep. Tom Sloan made a motion to reinstate language on page (1) lines 33 and 34 to "Resident: maximum \$250., Nonresident: maximum \$1000", and remove all reference to minimum through out the bill. Rep. Vaughn Flora seconded the motion. Motion carried. Discussion followed

Rep. Tom Sloan made a motion the bill be passed favorably as amended. Rep. Dan Johnson seconded the motion. Motion carried. Rep. Dan Johnson will carry the bill on the House Floor.

Chairperson Freeborn opened public hearing on **SB254**.

SB254: An act concerning environmental remediation; relating to fees of pesticide dealers.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 6, 2001.

The Chairperson welcomed Art Brown, Mid-America Lumbermens Association, to the committee. He testified as a proponent to the bill and believes the bill would allow a reduction of the fee paid to the Kansas Remediation fund that was created by the Legislature during the 2000 session to a segment of their smaller businesses. The bill would lower these fees from the current \$80.00 paid to the fund to a fee payment of \$5.00. This payment would be based on the first \$2500.00 of sales of such pesticides defined by current Kansas law. Sales beyond the \$2500.00 threshold would continue to pay the current \$100.00 fee. The \$20.00 pesticide license fee paid to the Kansas Department of Agriculture is not impacted by this change. Dealers, applicators and distributors as defined under current Kansas law all pay a scheduled fee to the Department of Agriculture to provide financial resources to the Kansas remediation fund. Farmers are exempted from paying a fee to this fund. (See attachment 10)

Mary Jane Stattelman, Administrator, Kansas Agriculture Remediation Board, was welcomed to the committee. The Remediation Board is supportive of the bill as drafted and think a number of the amendments that have been made will strengthen the law. As they have begun to work with the current law they discovered a few items that caused the Board concern and this bill addresses these concerns. However, the reality is they are not sure that they have discovered all of the clarifications that may need to be made so that the law functions in a reasonable and rational manner. Amendments to address concerns are included in the testimony. (See attachment 11)

Doug Wareham, Kansas Grain & Feed Association and Kansas Fertilizer & Chemical Association, was welcomed. Both KGFA and KFCA support the bill, which adjusts the annual assessment paid by small volume pesticide dealers to the Kansas Agricultural Remediation Fund. They support the amendments that were adopted that enable the Secretary of Agriculture to adopt rules and regulations concerning the collection of fees associated with the agricultural remediation program and specifically the provision that enables the Department to reimburse those businesses that have overpaid any fee. (See attachment 12)

Jamie Clover Adams, Secretary of the Kansas Department of Agriculture, was welcomed. She provided testimony in support of the bill which amends current environmental remediation law. As currently written, this bill will not have a fiscal impact on the Kansas Department of Agriculture because the proposed changes impact fees that are forwarded to the Kansas Remediation Board for administration. (See attachment 13)

There were no opponents to the bill. Questions and discussion followed. The Chairperson closed the hearing on **SB254**. She asked if the committee wished to take action.

Rep. Tom Sloan made a motion the bill be passed favorably. Rep. Becky Hutchins seconded the motion. Motion carried. Rep. Becky Hutchins will carry the bill on the House Floor.

Chairperson Freeborn opened the informational hearing on **HB2470**, which will be held over until Legislative Session 2002, for public hearing.

HB2470: An act concerning certain wildlife; relating to management and control.

The Chairperson welcomed Ron Klataske, Audubon of Kansas, to the committee. He testified in support of the bill and believes approval of the bill will be particularly valuable because of the determination by the US Fish and Wildlife Service that classified the black-tailed prairie dog as a candidate species, (“warranted but precluded” for designation as a threatened species) under the Federal Endangered Species Act. (See attachment 14)

Clint Riley, Department Attorney, Kansas Department Wildlife and Parks, was welcomed. He testified in support of the bill. This bill would amend certain laws addressing black-tailed prairie dogs. Although the bill explicitly allows anyone to voluntarily eliminate prairie dogs from their own land, the bill also establishes an alternative to extermination of the prairie dogs. Without evidence of positive efforts by the state to address prairie dog status, federal listing of the species becomes more likely. The department believes that legislation such as this bill is important for western Kansas landowners and for protection of our natural resources. (See attachment 15)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 6, 2001.

Bill Gill, Kansas Director, US Fish and Wildlife Service, was welcomed. He provided testimony in support of the bill. In August of 1998 the US Fish and Wildlife Service received a petition from the National Wildlife Federation and others to list the black-tailed prairie dog as a threatened species under the Endangered Species Act. After a review of the information submitted with the petition and available information, FWS found on February 3, 2000 that there was sufficient information to warrant listing under the Endangered species Act, however, higher priority listing activities preclude it from being listed at this time. The FSW will review this finding on an annual basis until such time that the priority changes or threats are removed so that listing is no longer warranted. (See attachment 16)

Alan Pollom, Vice President and Kansas Director of The Nature Conservancy, was welcomed to the committee. He presented testimony in support of the bill as a representative of The Nature Conservancy and its 8,000 Kansas members. The Nature Conservancy is a non-profit conservation organization that operates the world's largest system of privately owned natural areas. Their status is perhaps unique among those parties appearing before the committee today because they are a large private landowner with prairie dogs occurring on various lands that they manage. They recognize that many land managers have historically considered prairie dogs a nuisance animal. The focus of their management, however, is the promotion of healthy populations of our native wildlife in their natural habitat. (See attachment 17)

Leslie Kaufman, Kansas Farm Bureau, was welcomed to the committee. She provided testimony on behalf KFB in support of the bill and believes this bill provides a starting point to take the discussions regarding prairie dog control before the people of Kansas and it contains several provisions they can lend conceptual support to. The bill does represent a significant departure from current, long-standing state policy. KFB encourages the legislature to hold the bill over until next session, allowing it to become a vehicle for debate "out in the county" during the 2001 interim. For years, the people of Kansas have waged war on the prairie dog. KFB encourages the legislature to give these same constituents time to adapt to the concept of management and control. (See attachment 18)

Written only testimony, in support of the bill, was submitted by Charles D. Lee, Extension Specialist, Wildlife K-State Research and Extension. (See attachment 19)

The Chairperson welcomed Mike Beam, Kansas Livestock Association. He testified in a neutral position to the bill. KLA intends to schedule several meetings in western Kansas this summer and fall to discuss the prospects for listing the prairie dog, learn more about the prairie dog survey conducted this spring, and analyze the bill. Kansas Department of Wildlife and Parks and US Fish and Wildlife Service officials have offered to participate in these meetings. It's obvious to KLA that many of their members located in prairie dog country are uneasy about this bill and any efforts to preserve and protect this species. Most ranchers who care for well managed grazing lands absolutely detest the presence of a creature that burrows holes in the prairie and eats the grass and plants right into the ground. (See attachment 20)

The Chairperson welcomed Bob Bolen, Supervisor, Wallace County Noxious Weed and Prairie Dog Control, to the committee. He testified in opposition to the bill and believes this bill is putting the cart before the horse. As of today, he does not think we have enough information to go forward with this bill. We do not have an exact number of infested acres in Kansas. Until we have these figures, we cannot propose legislation that is effective. Further, we need to keep counties in control of what's happening in their respective counties. The landowners who pay the taxes should have more input either for or against this bill. He thinks this bill needs a lot of work before it goes any further. (See attachment 21) Questions and discussion followed.

Chairperson Freeborn closed the informational hearing on **HB2470**.

The meeting adjourned at 6:15 p.m. The next meeting is scheduled for Thursday, March 8, 2001.